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FM USMISSION USUN NEW YORK  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 1820  
INFO RUEHGG/UN SECURITY COUNCIL COLLECTIVE IMMEDIATE  
RUEHXX/ARAB ISRAELI COLLECTIVE IMMEDIATE  
RUEHEE/ARAB LEAGUE COLLECTIVE IMMEDIATE  
RUEHZL/EUROPEAN POLITICAL COLLECTIVE IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 04 USUN NEW YORK 000347

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E.O. 12958: DECL: 05/02/2017  
TAGS: [PREL](#) [PTER](#) [UNSC](#) [SY](#) [LE](#)  
SUBJECT: LEBANON TRIBUNAL: MICHEL BRIEFS COUNCIL AND  
MEMBERS REACT CAUTIOUSLY

REF: A. STATE 58765  
[1](#)B. STATE 58678  
[1](#)C. USUN 338

Classified By: Ambassador Zalmay Khalilzad, per 1.4 (b) and (d).

[1](#)1. (C) Summary. In a forthright briefing to the Security Council on May 2, UN Legal Counsel Nicolas Michel said his April 17-21 trip to Beirut to help facilitate Lebanese ratification of the UN-GOL agreement and statute establishing the UN Special Tribunal for Lebanon had yielded no concrete results. Given the political ~~&impasse~~ among the Lebanese parties, he concluded that the domestic ratification process faces "serious obstacles." He emphasized that all of his Lebanese interlocutors agreed in principle that they fully support the establishment of the tribunal. The problem, Michel made clear, is that the opposition in Lebanon refuses to discuss establishing the tribunal until they gain a controlling majority in a new government. He dampened any hopes for future initiatives to resolve the impasse, and emphasized that the tribunal must be established soon for operational reasons and in the interest of justice. P-3 PermReps strongly supported Michel and called for Council action to establish the tribunal. Belgium, Slovakia, and Peru delivered supportive interventions. Qatar, Russia, China, Indonesia, and Panama expressed varying degrees of opposition to UNSC action to establish the tribunal, arguing that reaching a national consensus is imperative, and calling on Michel and the SYG to continue their efforts to encourage a Lebanese solution. South Africa, Ghana, Italy, and Congo (who did not speak) did not commit themselves either way. End Summary.

Michel Delivers Strong Briefing  
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[1](#)2. (U) In a forthright briefing to the Security Council on May 2, UN Legal Counsel Nicolas Michel said his April 17-21 trip to Beirut to assist the Lebanese authorities and parties on their way towards ratifying the UN-GOL agreement and statute establishing the UN Special Tribunal for Lebanon had yielded no concrete results. Given the political ~~&impasse~~ among the Lebanese parties, Michel concluded that the domestic ratification process faces "serious obstacles." Despite the impasse, he noted that all of his Lebanese interlocutors expressed support in principle for the tribunal's establishment. Michel noted that he had ~~&spared~~ no effort in attempting to persuade the Lebanese to ratify the tribunal texts through their constitutional process, meeting with Prime Minister Siniora, President Lahoud, and Speaker of the Parliament Berri, as well as other representatives of the Government and the opposition, including MPs Michel Aoun and Mohammad Fneish. Despite his efforts and those of others, such as Arab League and Saudi Arabia, Michel expressed "serious doubts" that the Lebanese

Parliament would be convened before May 31 to adopt the tribunal texts. (Note: Text of Michel's briefing sent to the Department via unclass e-mail. End Note.)

#### And Stands Firm in Response to Questions

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13. (C) In response to questions from Russia and Qatar, Michel said clearly that the opposition had refused to engage him on the substance of the tribunal agreement and statute, even though though he had composed his delegation with a view to addressing substantive issues. He reported that Speaker Berri had told him &forcefully8 that his problem is not with the tribunal or the content of the agreement and the statute but rather the legitimacy of the Lebanese government. Berri told Michel that he would not convene the Parliament because he considers the government to be deprived of constitutional legitimacy. Michel described MP Michel Aoun's reactions as &very close8 to Berri's, noting that Aoun said he "might" have comments on the tribunal texts but did not have any "major problems." Hizballah's representatives told him they &might or might not have comments8 on the texts but would not discuss the content of the texts until their concerns on the composition of the Government are addressed. Michel made clear that the opposition is unwilling to discuss establishment of the tribunal until they gain a blocking majority of seats in the government, and shared his judgment that it is "not realistic" to expect that this linkage can be broken. Michel rejected a suggestion from Qatar that he should have engaged substantively on objections to the tribunal agreement and statute provided by Lahoud's legal adviser on the grounds that others in the opposition had refused to provide their comments.

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14. (C) Without saying so explicitly, Michel came as close as possible to ruling out any future initiatives to establish the tribunal. Asked for specific information about the &creative ideas8 to establish the tribunal he mentioned in his briefing, Michel said he had asked Speaker Berri for an update on his proposal to create a Working Group to discuss the status of the tribunal. Michel said he and Berri had discussed possibilities for convening such a Working Group, including issues such as when and where it would meet, and Berri had proposed including Michel and Minister of Justice Rizk. Michel said he then raised the proposal with Prime Minister Siniora, who showed interest. At Michel's request, UN Special Coordinator for Lebanon Geir Pedersen followed up to see if the Working Group option was feasible, but Pedersen advised Michel this week that the option &has gone nowhere.8 Responding to Italy, Michel saw no possibility of launching the Working Group idea, saying he did not think he could achieve better results than Pedersen by reopening the issue himself. In conclusion he said, "I did truly try all options."

15. (C) Michel was clear that the tribunal had to be established soon for operational reasons and in the interest of justice. He reiterated that once the legal basis for the tribunal becomes effective, it would take at least a year for the tribunal to become operational. Among other things, he said the Secretariat must identify a venue for the tribunal and negotiate a host country agreement with the relevant country; judges also need to be selected in a way that will ensure their independence. As a result, waiting to establish the tribunal &will greatly complicate the task of the Secretariat." Michel also warned that a delay in

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establishing the court could hinder the work of the UN International Independent Investigation Commission (UNIIIC). Citing UNIIIC President Brammertz, Michel argued that delays on the tribunal would undermine the UNIIIC's ability to persuade witnesses to testify and the Commission's ability to

retain professional staff.

#### P-3 Push for Council Action

16. (C) P-3 PermReps all emphasized that the Council had to act to establish the tribunal. Ambassador Khalilzad emphasized that establishing the tribunal is necessary for justice and to ensure long-term stability in Lebanon. Noting that those blocking ratification of the tribunal agreement refuse to engage on the issue despite efforts by Michel and Ban, he concluded that Council action is now the only option to establish the tribunal. French PermRep de la Sabliere, recalling Michel's description of an "impasse" in Lebanon, argued that failure to establish the tribunal undermines the work of UNIIIC, suggests that "stability can be purchased at the price of justice," and challenges the Council's credibility. The "time is coming for the Council to show its responsibility to help Lebanon overcome this impasse," de la Sabliere declared. UK PermRep Jones-Parry agreed that the tribunal was basic to stability in Lebanon. It would be great if the Lebanese could ratify the tribunal agreement, he said, but they cannot. In light of Michel's briefing, hoping that they will do so is an illusion. He concluded that it "now appears that the UNSC is the only route to establish the tribunal."

#### Three Delegations Generally Supportive

17. (C) Belgium, Slovakia, and Peru delivered helpful interventions, but stopped short of explicitly endorsing Council action. Belgian PermRep Verbeke noted that the tribunal was a matter of national consensus in Lebanon and observed that no challenges have yet been raised to its establishment. Suggesting that the tribunal is at the "crossroads between justice and stability," Peruvian PermRep Voto-Bernales noted that "other options" to establish it carry costs with regard to international law and in terms of support within Lebanon, but said the Council "cannot ignore this matter." Decrying Lebanon's failure to ratify the tribunal agreement, Slovakia recognized the "urgent need to establish the tribunal to achieve justice." Slovakian PR Burian asked what tools the Security Council might use to further encourage the Lebanese parties to reach agreement.

#### Five Countries Opposed to Chapter VII

18. (C) Qatar took the hardest line against Council action to establish the tribunal. Although he said he had "no

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political statements to make," Qatari Minister-Counselor Mutlaq al-Qahtani took the floor three times to insist that the "tribunal would not see the light of day except after a Lebanese national consensus." He argued that the Council, by inviting the SYG in November 2006 to proceed towards establishment of the court "together with the GOL, in conformity with the constitution of Lebanon," had agreed that the tribunal could only be established through the Lebanese constitutional process. Noting that Lahoud had made clear his objections to the tribunal agreement and statute, al-Qahtani took issue with Michel's suggestion that the opposition was unwilling to engage on the tribunal until a National Unity Government is formed.

19. (C) Panama and Indonesia also expressed concerns about UNSC action to establish the tribunal. Panamanian delegate Alfredo Suescum emphasized that the tribunal should be established through political agreement between the Lebanese factions and a decision "taken through constitutional channels." He underscored the critical importance that the tribunal be perceived by the Lebanese as legitimate, asked about any "creative ideas" Michel or the SYG propose to break the deadlock over the NUG and the tribunal, and urged Michel

to continue his efforts towards this end. The Indonesian PR emphasized that "imposing a measure that does not enjoy support in Lebanon should be avoided" and warned that such efforts could be "counter-productive and negative." Insisting that the tribunal should be established by parliamentary ratification versus "other measures," he argued that "national reconciliation is essential" for the tribunal.

¶10. (C) Russia and China were more nuanced in their interventions. Russian PR Churkin said the international community must tread "very delicately" in Lebanon to ensure that its efforts -- especially on the tribunal -- enhance cohesion and tranquility within Lebanese society. "Too vigorous" involvement by the international community in Lebanon "can cause problems." Arguing there could be "no juxtaposition of justice and stability," he emphasized instead that the objective must be "peace with justice." Churkin expressed hope that Michel would continue his efforts to help establish the tribunal. (Note: The Russian Middle East expert reportedly told the Israeli Mission on May 2 that Russia could accept the tribunal as long as it is not used as a means to effect regime change in Syria. End Note.) Echoing Churkin's call for Michel and Ban to continue their consultations with the parties, China declared that "only a tribunal acceptable to all Lebanese will be useful for justice." The UNSC should be "very cautious" regarding the tribunal and must remember that its involvement in this issue was meant to help the Lebanese people realize justice and to foster political reconciliation and stability. As for next steps, the Chinese DPR concluded: "I don't think we have many choices; the only way is to continue the diplomatic effort."

#### Others Delegations Undecided

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¶11. (C) Italy, Ghana, and South Africa did not commit themselves either way on next steps to establish the tribunal. Congo did not speak. Italian PR Spatafora strongly encouraged the SYG to continue his diplomatic efforts to find a Lebanese solution to the issue, including by applying pressure on the parties. He suggested that UNSC could say it is "following the issue with great attention." Spatafora asked if there were any "creative ideas" that could be used to help the opposition save face on the tribunal. Expressing "great concern" at the lack of progress towards establishing the tribunal, Ghana lamented that we had reached a "dead end": the tribunal cannot be established without parliamentary approval, but that leaves us no choice but to "continue to engage with the factions to break this impasse." Surprisingly, South African PermRep Kumalo limited his intervention to one question: "if there will be no de-linkage between the tribunal issue and the formation of a NUG, where do we go from here?"

#### Meetings with Lebanese and P-3

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¶12. (C) During a meeting with Ambassador Khalilzad on May 1, GOL senior foreign policy advisor Mohammad Chattah said the GOL would take stock after the Michel briefing and decide whether to push for quick Council action to establish the tribunal or spend more time lobbying UNSC missions and capitals. Ambassador Khalilzad pressed the GOL to send a clear, unambiguous letter requesting that the Council invoke its Chapter VII authority to establish the tribunal. Chattah expressed concerns about the domestic sensitivity of

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requesting Chapter VII, but promised to discuss the issue with PM Siniora. Chattah said he would engage most UNSC delegations by May 3 to underscore that the Lebanese parliamentary process to establish the tribunal is blocked and that the Council must take action.

¶13. (C) After the meeting with Ambassador Khalilzad, Chattah met with SYG Ban. According to the Lebanese, Ban said he did

not/not want action to create the tribunal in the UNSC now. Instead, the SYG planned to urge the Syrians and others in Sharm al-Sheikh to use their influence to encourage a Lebanese solution to the tribunal issue. Ban also told Chattah that he was concerned, based on his recent visits to the Middle East, that Council action to establish the tribunal could lead to civil war in Lebanon. Based on their meeting with Ban, the Lebanese could not/not predict whether the SYG would endorse Chapter VII if his meetings in Sharm al-Sheikh fail to break the impasse in Lebanon.

¶14. (C) During a separate P-3 meeting on May 1, French PR de la Sabliere said Paris had decided to support a "light" Chapter VII UNSCR that does not compel third-state cooperation or lift immunities. French Mission staff said they would ask Paris for clearance to share the text of their draft resolution with USUN as soon as possible. P-3 Ambassadors will meet again, this time with Chattah, on May 3 to discuss the way forward.

Comment

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¶15. (C) Michel's statement was stronger than the uncertain remarks he previewed for Ambassador Wolff on April 30. Despite Michel's briefing, however, we count only six likely votes (P-3, Peru, Slovakia, and Belgium) in favor of a Chapter VII resolution at this time, and stated opposition by at least Qatar, China, and Russia. Our efforts and those of the Lebanese to secure nine votes in favor, as well as SYG Ban's remarks upon his return from Sharm al-Sheikh, will therefore be crucial to ensuring success. The SYG intends to brief the Council on his visit last week to Damascus and this week's participation in Sharm in the near future. We will need to work to encourage him to declare the Lebanese parliamentary ratification process definitively blocked and to endorse Council action to establish the tribunal.  
KHALILZAD